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Held at the Palais Wilson, Geneva, on Tuesday, 15 July 2014, at 3 p.m.

Chairperson: Sir Nigel Rodley

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Sixth periodic report of Japan (CCPR/C/JPN/6, CCPR/C/JPN/Q/6, CCPR/C/JPN/Q/6/Add.1 and HRI/CORE/JPN/2012)

1. *At the invitation of the Chairperson, the delegation of Japan took places at the Committee table.*

2. **Mr. Okada** (Japan) said that the report had been prepared with the assistance of several ministries and government agencies and of numerous civil society organizations whose views had been canvassed with interest through the website of the Ministry of Foreign Affairs and through consultations. Since the submission of the report the Government had continued to strive actively to promote and protect human rights. Pursuant to the undertaking given in 2013 before the General Assembly of the United Nations, Japan had embarked upon a growth strategy centring on the promotion of women's active participation in society and in the economy and aimed, inter alia, at boosting the proportion of women in leadership positions to 30 per cent by 2020 and, more generally, at enabling all women to achieve their full potential. The Government was endeavouring actively to combat all forms of violence against women in accordance with the Act on the Prevention of Spousal Violence and the Protection of Victims, as revised in 2013.

3. On 20 January 2014 Japan had become the 141st State party to the Convention on the Rights of Persons with Disabilities, thus bolstering its commitment to the fulfilment of those persons' rights. The legislative measures adopted in that sphere included the Revised Act on Mental Health and Welfare of Persons with Mental Disorders, which had entered into force in April 2014 and which provided for the formulation of guidelines defining the direction of mental health services, facilitating the discharging of patients from hospitals and strengthening the role of the Mental Health Service Council which was responsible for appraising the validity of involuntary hospitalization. The implementation of the Act would be assessed after three years, at which point stock would be taken of the results in order to define such additional measures as might be appropriate to improve the situation of persons with mental disability.

4. Substantial progress had been made with regard to the rights of children born out of wedlock. Provided they had been recognized by their father, those children could obtain Japanese nationality without any need for their parents to be married and they had the same rights of inheritance as children born in wedlock. The Civil Code and the Child Welfare Act had been revised in order to give children greater protection against violence. In 2010 and 2011, pursuant to the Action Plan to Combat Trafficking in Persons, the Government had devised guidelines for the means of identifying and protecting victims. An interministerial liaison committee met regularly to ensure the follow-up on measures taken in that respect and to collect data, in cooperation with NGOs.

5. In May 2009 the criminal justice system had undergone a thorough reform with the introduction of the lay judge system, the aim of which was to secure the general public's participation in the exercise of criminal justice, in order that the population might gain a deeper understanding of the judicial system and greater trust of the courts. The judgements delivered by lay judges rested on objective evidence and forensic investigation. Audiovisual recordings had been made, as an experiment, of more than 90 per cent of interviews conducted between April 2012 and March 2013. An advisory board of the Ministry of Justice had issued a favourable opinion on the usefulness of those recordings and was studying practical arrangements for their systematic use.

6. **Mr. Yamanaka** (Japan), summarizing Japan's written replies to the list of issues, said that, although their position in the internal hierarchy of laws was not established by the Constitution, international instruments ratified by Japan took precedence over domestic laws. Whether the provisions of the Covenant could be invoked directly by the courts was examined on a case-by-case basis. Examples of cases where those provisions had been directly cited before or by courts could be found in paragraphs 3 to 5 of the written replies. The Human Rights Commission Bill had been submitted to the Diet on 9 November 2012, but no action had been taken on it owing to the dissolution of the House of Representatives a few days later. While it recognized the usefulness of the individual communications procedure, before deciding whether or not to accept it, Japan had first to examine the implications of that procedure for its judicial system and legislative policy. That process was under way.

7. Article 14, paragraph 1, of the Constitution embodied equality for all before the law and prohibited discrimination based on race, creed, gender, social status or family origin. Laws regarding employment, education, health services and transportation also contained provisions banning discrimination. Several examples of judicial decisions rendered in discrimination cases could be found in paragraphs 16 to 19 and 23 to 26 of the written replies. As public opinion was divided on proposals to shorten the waiting period for women who wished to remarry and to harmonize the minimum age for marriage of men and women, the Government deemed it preferable not to revise legislation for the time being.

8. Detailed information on information campaigns to counter domestic violence and on the training given in that respect to police officers, public prosecutors and judges was to be found in paragraphs 49 to 53 of the written replies. The criminal law provisions punishing sexual offences were being reviewed. One of the changes under consideration was to make rape automatically subject to prosecution, whereas currently it could be prosecuted only if a complaint was filed. The Act on Special Provisions for Handling People with Gender Identity Disorders had been amended in 2008 to the effect that the statutory ban on a sex change, which had initially applied to any person with children, had been restricted to persons with underage children. Combating xenophobia and discrimination based on gender orientation and identity was a priority for the Government which rolled out activities to raise awareness of those issues all year round.

9. As the death penalty was still regarded by the majority of Japanese as the only fitting punishment for particularly serious crimes, the Government considered it inadvisable to abolish it, or to introduce a moratorium on executions. Nor did it deem it necessary to introduce a mandatory review of death sentences, since the latter were passed in accordance with extremely stringent procedures and were open to appeal. The Government did not consider the treatment of death row inmates to be contrary to human rights, since the greatest of attention was paid to their physical and mental health. The restrictions on their right to communicate with one another and to receive visits could be lifted, provided that that did not threaten order within the prison. The Government saw no reason to abolish the substitute detention system because it was accompanied by the requisite guarantees of detainees' fundamental rights.

10. The notion of "public welfare" met the need to regulate the exercise of certain rights when they encroached on others. Its purpose was not arbitrarily to restrict human rights in any way and there were therefore no grounds to specify in legislation that public welfare restrictions on freedom of religion, opinion and expression must not exceed those permissible under the Covenant. The principle of non-refoulement embodied in article 53, paragraph 3, of the Immigration Control and Refugee Recognition Act was properly applied. Aliens whose application for refugee status had been denied had seven days to lodge an appeal. The immigration services and the Japanese Federation of Bar Associations were discussing ways of improving procedures for determining refugee status, especially in

respect of the access of aliens held in administrative custody to free legal advice. Minors seeking asylum were not placed in detention unless it was otherwise impossible to care for them, in which case everything was done to ensure that detention was as short as possible.

11. The Ainu had been recognized as an indigenous people since 2008 and a policy of actively promoting their language and culture was pursued, above all through the Foundation for the Research and Promotion of Ainu Culture. A "symbolic area for ethnic harmony", which would be devoted to the revitalization of the Ainu culture, was being laid out. Measures were also being taken to protect the cultural heritage of Okinawa. All Japanese children were guaranteed the right to education, without discrimination. Korean schools were not currently covered by the tuition-waiver programme for secondary education, because it had been found that the content of their education and their management were influenced by the Chongryon Association and did not comply with Japanese laws and regulations. Since 2008, all school leavers, including those from Korean and other foreign schools, whose knowledge was equivalent to or better than that attested to by the Japanese secondary school-leaving certificate, could be admitted to university subject to a case-by-case examination of their file.

12. The Government, being aware of the unspeakable suffering of the "comfort women", had presented public apologies to those concerned on several occasions and in 1995 it had set up the 4.8 billion yen Asian Women's Fund, which made it possible to offer medical and social support to those women and to pay them compensation. The Fund had been wound up in March 2007, but the Government was still carrying out follow-up activities. As part of the implementation of the 2009 national Action Plan to Combat Trafficking in Persons, the Government had gathered information with a view to defining "trafficking" and in June 2010 it had published guidelines on the examination of trafficking cases. In 2005 the Immigration Control Act had been revised and supplemented with provisions making it possible for trafficking victims to be issued with a special residence permit. Since the introduction of those amendments, all trafficking victims unlawfully present in the country had applied for and obtained a residence permit. Training on subjects connected with trafficking was organized for police officers, judges and public prosecutors. In 2009 the Immigration Control Act had been amended to expand the legal protection of apprentices and trainees and to prevent their exploitation, including that of sexual nature. Inspections were conducted if there was any suspicion that labour legislation had been breached and, if offences were found to have occurred, the employer could lose its authorization to take on trainees for five years.

13. Since the revision of the Nationality Act in 2008, children born out of wedlock could obtain Japanese nationality, provided that one of the parents was Japanese and had officially recognized the child. In addition, the Civil Code had been revised in 2013 to give children born out of wedlock the same inheritance rights as the children of a married couple. The authorities had embarked upon a revision of criminal law provisions punishing sexual offences in order to raise the age of consent to sexual relations, which was currently 13. The relevant draft amendments should be adopted by March 2016 at the latest. Legislation on the prevention of violence against children did not expressly prohibit corporal punishment. As indicated in the written replies (para. 282 et seq.) measures had been taken to prevent and prohibit corporal punishment in schools.

14. **The Chairperson** invited Committee members who so wished to put questions to the delegation.

15. **Mr. Flinterman** (Country Rapporteur) welcomed the submission of the report and written replies and was pleased to note that the dialogue between the State party and the Committee had been pursued almost without interruption for 35 years. While progress had certainly been made over that period, an analysis of the follow-up to the Committee's previous concluding observations showed that some matters were again under consideration

because the State party had not taken real steps to solve the problems. Since the information in the written replies regarding the status of the Covenant in the hierarchy of domestic law was incomplete, he invited the delegation to specify the articles of the Covenant which were directly applicable, to provide examples of legislation adopted in order to incorporate into domestic law the provisions of the Covenant which were not directly applicable, to explain the Covenant's status vis-à-vis the provisions of the Constitution concerning human rights and to say if cases concerning violations of the Covenant's provisions could be brought before the Supreme Court. The delegation might also wish to say whether members of the judiciary, public prosecutors and police officers were given training in the applicability of the Covenant and whether the Committee's general comments had been translated into Japanese and included in training programmes. It would be interesting to know the conclusions of the internal study of the advisability of accepting the Committee's competence to receive communications, the potential obstacles to the State party's ratification of the Optional Protocol to the Covenant and when a decision would be taken on that matter. Ever since the beginning of the 1990s the Committee had been recommending that the State party should set up an independent national human rights institution. He therefore asked what prevented the establishment of such an institution. He also invited the delegation to explain the system for remedying human rights violations to which reference had been made in the written replies.

16. **Ms. Majodina** asked what was meant by the term "unreasonable discrimination" which was to be found in the written replies. She wondered whether the State party intended to adopt a general law prohibiting all forms of discrimination, in accordance with article 26 of the Covenant and whether measures had been taken to establish a body to monitor direct and indirect discrimination in the public and private sectors. She invited the delegation to describe the measures taken to protect victims of violence inflicted by a same-sex or common-law spouse, since those categories of victims were not entitled to request a protection order. It would be interesting to know how many foreign victims of domestic violence had obtained a residence permit in the State party, how many sentences had been passed for breach of a protection order and what specific steps had been taken to review the definition of the constituent elements of rape in criminal law.

17. Having noted the detailed information supplied in the report on substitute detention (*daiyo kangoku*), she was surprised that for 30 years the Government had not found the requisite resources to open more detention centres, a move which would make it possible to abolish that form of detention which blatantly conflicted with the provisions of the Covenant. Information from an NGO suggested that there had been several instances of confessions obtained by coercion during substitute detention over the previous five years. It would be helpful to hear what the delegation had to say on that matter and to know if there was a cause and effect connection between lengthy questioning during substitute detention and the fact that suspects subjected to that treatment made false statements. She wondered whether the *Hakamada* case, where a man who had been sentenced to death on the basis of confessions extorted after 20 days of questioning while in substitute detention had been released pending a review of his case after spending 48 years on death row, might not encourage the Government to abolish *daiyo kangoku*.

18. **Mr. Neuman**, noting that the State party was not yet prepared to adopt measures to shorten the period of time during which women were prohibited from remarrying and to harmonize the minimum age of marriage of men and women, wished to have an explanation of the argument put forward on that subject in the written replies, namely that such changes would undermine the foundations of the institution of marriage and the family. Since the Committee had received information that many persons with mental disability had been wrongly deprived of their liberty, he asked the delegation whether it was correct that persons with disabilities could be confined against their will solely because their disability tarnished their family's reputation, whether there were any channels of

appeal against involuntary hospitalization and whether there were any guarantees enabling persons who had been hospitalized at their own request freely to exercise their right to discharge themselves. According to some sources, thousands of persons remained in medical establishments because they had nowhere else to go and the living conditions of persons in group homes were not really any better than in hospitals. The delegation might wish to comment on those allegations and to say whether the State party intended to take steps to ensure that persons with mental disability could live in the community with the requisite assistance and that involuntary hospitalization would be used solely as a last resort and only as long as was strictly necessary.

19. It was regrettable that the State party did not intend to abolish the death sentence or adopt a moratorium on its implementation. The State party's written replies to questions on that form of sentence were very skimpy. He wondered whether it was true that Mr. Hakamada, the man who had been sentenced to death and who had been freed a few months earlier pending retrial, had spent almost 50 years waiting for execution at any moment. As no death sentence had been commuted since 1975, it would be useful to know whether the right to request the commutation of the sentence, embodied in article 6, paragraph 4, of the Covenant, could really be exercised in the State party. He invited the delegation to confirm the accuracy of information from an NGO that the unlawful use of explosives and damaging inhabited buildings were among the 19 offences carrying the death penalty. Since lay judges would henceforth have the authority to pass death sentences, he asked whether the State party intended to follow the Committee's recommendation that a compulsory review of death sentences should be introduced. He wished to know why meetings between persons who had been sentenced to death and their lawyers were still not confidential. Lastly, he requested information about the findings of the Ministry of Justice study of the death sentence.

20. **Mr. Shany**, noting the limited progress recorded in women's representation in the world of work and political life, asked whether the State party intended to adopt more energetic measures than those taken so far. He wished to know why policies to promote women's recruitment, reduce the wage gap between men and women and increase the proportion of women holding positions of responsibility had had little effect and whether the reasons for that failure would be studied under the Third Basic Plan for Gender Equality. The delegation might wish to describe the content of the counselling given to women who had sought consultations owing to the fact that they had been dismissed because they were pregnant, to which reference had been made in the written replies, and to explain why only 19 cases of wrongful dismissal had been referred to the courts and why harassment at the workplace, including sexual harassment, had not been expressly qualified as a crime in domestic law. He also invited the delegation to say whether the Government intended to conduct a survey of the working conditions of women belonging to a minority and whether any measures had been adopted to improve the representation of that category of women on the labour market. Turning to the fight against discrimination, he asked if it was true that the dissemination of racist ideas was not punished by law, unless it was accompanied by other criminal acts and whether the Government intended to make any moves to fill current gaps in legislation in that sphere.

21. As far as audiovisual recordings of police questioning were concerned, it would be interesting to know the criteria for deciding whether or not questioning was to be recorded and what measures were in place for supervising recordings and for controlling the use made thereof. He asked the delegation to respond to allegations that the rules applying to questioning were not respected and that questioning took place without a lawyer. It might also wish to comment on the number of protracted questioning sessions that were authorized every year. The fact that 99 per cent of trials in Japan ended with a conviction, which rarely formed the subject of an appeal, suggested that proceedings were more favourable to the prosecution than to the defence and that inordinate importance was

attached to confessions, which might be false when they were obtained under pressure. He asked the delegation to say what action had been taken on the recommendation of the Committee against Torture that investigations into alleged acts of torture inflicted on detainees should be more independent.

22. **Ms. Seibert-Fohr** said that, while the 2004 Act on Special Provisions for Handling People with Gender Identity Disorders constituted some progress, she wondered whether the reference to "disorders" might not add to the stigmatization of the persons concerned. She asked the delegation whether any other legislative measures were planned to facilitate recognition of transsexuality and whether discrimination against transsexual persons was punished by law. Information would be welcome on the specific measures taken to combat the harassment of homosexual, bisexual and transsexual persons, on the investigation of such actions and on the outcome of the national action plan in that sphere. It would also be useful to know whether, despite the reform of the social housing system, local authorities could still refuse to allocate housing to a homosexual couple. With regard to the national pension scheme, it seemed that the nationality requirements imposed between 1961 and 1981 still affected some population categories. She therefore invited the delegation to provide a detailed description of the transitional measures adopted for the persons concerned and of the more flexible procedures for granting the pensions to which they were entitled.

23. **Mr. Zlătescu** asked the delegation for information on preventive measures, inquiries and compensation in respect of the numerous alleged human rights violations in psychiatric hospitals. Had measures been adopted to guarantee the principle of informed consent and train medical staff in that respect? The delegation might wish to say whether the Government had a strategy to promote deinstitutionalization and expand community services.

24. **Mr. Bouzid** asked whether the special surveillance measures applied to the Muslim community, which had been adopted as part of the fight against terrorism, were still in place and whether persons whose personal data had been divulged by the police had received compensation.

25. **The Chairperson** invited the delegation to reply to the questions put to it.

26. **Mr. Yamanaka** (Japan) explained that, under article 98, paragraph 2, of the Constitution, the Covenant was incorporated into Japanese domestic law. In some cases its provisions could be applied automatically, in others they had an equivalent clause in national laws. Examples of cases where the Covenant had been cited were mentioned in paragraphs 3 to 5 of the written replies to the list of issues. Japan considered that the individual communications procedures helped to ensure the implementation of international human rights instruments and it was seriously studying the possibility of acceding to the Optional Protocol to the Covenant. However, the impact of that procedure on the Japanese judicial and legal system and the possible methods of applying the Committee's decisions had not yet been determined. Discrimination was prohibited by article 14, paragraph 1, of the Constitution. There was no single law prohibiting all forms of discrimination, but anti-discrimination clauses were included in various acts on employment, education and transportation, inter alia. Persons who used discriminatory language were liable to prosecution if the terms employed were defamatory, if they cast a slur on the victim's honour or if they constituted a form of intimidation. Violence accompanying such language was punished per se by the law. Japan took a humanitarian approach to the protection of foreign nationals against domestic violence. Prosecution was initiated irrespective of the victim's nationality and protection orders could be issued by the courts as a preventive measure. Same-sex couples' access to social housing was possible under the law, but allocation criteria were a matter for local government.

27. **Mr. Matsumoto** (Japan) said that judges and public prosecutors were trained in and made aware of issues related to international human rights law, including the application of the Covenant. The bill establishing a human rights commission had been submitted to the Diet a few days before the latter had been dissolved in November 2012 and no action had therefore been taken on it. The terms of reference, field of action and various other aspects of the prospective institution were again under discussion.

28. **Mr. Tanaka** (Japan) said that changing the legal age of marriage of men and women was a sensitive issue which formed the subject of debate in Japanese society. It was therefore too early to alter it. The purpose of the waiting period which women had to observe before remarriage was to avoid any filiation problems which might arise in the event of rapid remarriage.

29. **Mr. Kitajima** (Japan) said that substitute detention in police cells facilitated police investigations and visits by family members and lawyers. As most suspects were currently held in such premises and the cost of building additional prisons would be substantial, Japan considered it unwise to dismantle that system. Detention conditions in police premises were regulated by law and monitored by detention facilities visiting committees. The Japanese Government did not consider the use of substitute detention to be problematic in that respect. Persons placed in detention, including those in police custody, had the right freely to choose their lawyer and to talk to that person without a witness. When the suspect was liable to a heavy prison sentence or the death sentence, he or she could obtain the assistance of a lawyer by means of legal aid. Destitute persons could also apply for legal aid.

30. **The Chairperson** thanked the delegation and invited it to continue its replies at the next meeting.

The meeting rose at 6 p.m.